

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-7006

ARSEAN L. HICKS,

Petitioner - Appellant,

versus

D. A. BRAXTON, Warden,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Claude M. Hilton, Chief District Judge. (CA-03-885-1)

Submitted: August 11, 2004

Decided: October 28, 2004

Before WIDENER, WILLIAMS, and DUNCAN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Arsean L. Hicks, Appellant Pro Se. Richard Bain Smith, Assistant Attorney General, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Arsean L. Hicks appeals from the dismissal of his 28 U.S.C. § 2254 (2000) petition as untimely filed. An appeal may not be taken to this court from the final order in a § 2254 proceeding unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2000). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2000). A prisoner satisfies this standard by demonstrating that jurists of reason would find that his constitutional claims are debatable and that any dispositive procedural rulings by the district court are also debatable or wrong. See Miller-El v. Cockrell, 537 U.S. 322, 336 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683 (4th Cir. 2001).

We have reviewed the record and conclude that Hicks has not made the requisite showing. We therefore deny a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED